

116TH CONGRESS
1ST SESSION

H. R. 4086

To direct the Secretary of Veterans Affairs to determine presumptions of service connection for illnesses associated with open burn pits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2019

Mr. BILIRAKIS (for himself and Mr. RUIZ) introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Secretary of Veterans Affairs to determine presumptions of service connection for illnesses associated with open burn pits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Protection for Vet-
5 erans' Burn Pit Exposure Act of 2019".

1 **SEC. 2. DETERMINATION OF PRESUMPTIONS OF SERVICE**
2 **CONNECTION FOR ILLNESSES ASSOCIATED**
3 **WITH OPEN BURN PITS.**

4 (a) IN GENERAL.—

5 (1) DETERMINATION REQUIRED.—Not later
6 than 60 days after the date on which the Secretary
7 of Veterans Affairs receives the results of a covered
8 study, the Secretary shall make a determination
9 whether a positive association exists between—

10 (A) the exposure of humans to toxic air-
11 borne chemicals and fumes caused by open air
12 burn pits and other airborne hazards; and

13 (B) the occurrence of a diagnosed illness in
14 humans.

15 (2) BASES OF DETERMINATION.—In making a
16 determination under paragraph (1), the Secretary
17 shall consider—

18 (A) whether the evidence is statistically
19 significant, capable of replication, and able to
20 withstand peer review demonstrating that there
21 is positive association between the exposure and
22 the occurrence of a diagnosed illness;

23 (B) the results of a covered study; and

24 (C) all other sound medical and scientific
25 evidence available to the Secretary.

1 (3) PRESUMPTION.—If the Secretary deter-
2 mines that a positive association exists between ex-
3 posure and a diagnosed illness pursuant to para-
4 graph (1), the Secretary shall prescribe regulations
5 providing that—

6 (A) a presumption of service connection is
7 warranted for the illness covered by that deter-
8 mination if the illness first becomes manifest
9 within the period, if any, prescribed in such
10 regulations in a covered veteran; and

11 (B) such covered veteran shall be pre-
12 sumed to have been exposed to toxic airborne
13 chemicals and fumes caused by open burn pits
14 unless there is conclusive evidence to establish
15 that—

16 (i) the covered veteran was not ex-
17 posed to toxic airborne chemicals and
18 fumes caused by open burn pits in the
19 course of service in the Armed Forces de-
20 scribed in subsection (c)(1); or

21 (ii) the illness first became manifest
22 prior to the covered veteran's exposure.

23 (4) SUBMISSION.—Upon the date on which the
24 Secretary makes the determination under paragraph
25 (1), the Secretary shall submit to the Committees on

1 Veterans' Affairs of the House of Representatives
2 and the Senate an explanation of such determina-
3 tion.

4 (b) REGULATIONS.—

5 (1) PROPOSED REGULATIONS.—

6 (A) TIMING.—If the Secretary determines
7 under subsection (a)(1) that a presumption of
8 service connection is warranted for an illness,
9 the Secretary shall, not later than 180 days
10 after making such determination—

11 (i) issue proposed regulations setting
12 forth the determination; or

13 (ii) submit the initial report under
14 subparagraph (B).

15 (B) REPORTS.—If the Secretary does not
16 issue proposed regulations by the deadline es-
17 tablished in subparagraph (A), the Secretary
18 shall submit to the Committees on Veterans'
19 Affairs of the House of Representatives and the
20 Senate a report on the status of such proposed
21 regulations. On a quarterly basis thereafter
22 until the date on which the Secretary issues
23 such proposed regulations, the Secretary shall
24 submit to such committees an update on such
25 status.

1 (2) FINAL REGULATIONS.—Not later than 180
2 days after the date on which the Secretary issues
3 any proposed regulations under this subsection, the
4 Secretary shall prescribe final regulations. Such reg-
5 ulations shall be effective on the date of issuance.

6 (3) PRESUMPTION NOT WARRANTED.—

7 (A) PUBLICATION.—If the Secretary deter-
8 mines under subsection (a) that a presumption
9 of service connection is not warranted for an ill-
10 ness, or proposes to remove a previously estab-
11 lished presumption, the Secretary shall publish
12 in the Federal Register a notice of that deter-
13 mination not later than 180 days after making
14 the determination. The notice shall include an
15 explanation of the evidence and scientific basis
16 for that determination.

17 (B) REMOVAL OF PREVIOUS PRESUMP-
18 TION.—If an illness already presumed to be
19 service connected under this section is subject
20 to a notice published under subparagraph (A),
21 the Secretary shall issue proposed regulations
22 removing the presumption for the illness not
23 later than 180 days after publication of such
24 notice.

1 (4) EFFECT OF REMOVAL.—Whenever the pre-
2 sumption of service connection for an illness under
3 this section is removed under this subsection—

4 (A) a veteran who was awarded compensa-
5 tion for the illness on the basis of the presump-
6 tion before the effective date of the removal of
7 the presumption shall continue to be entitled to
8 receive compensation on that basis; and

9 (B) a survivor of a veteran who was
10 awarded dependency and indemnity compensa-
11 tion for the death of a veteran resulting from
12 the illness on the basis of the presumption be-
13 fore that date shall continue to be entitled to
14 receive dependency and indemnity compensation
15 on that basis.

16 (c) EFFECTIVE DATE OF BENEFIT AWARDS.—The
17 effective date of any benefit awarded by reason of this sec-
18 tion shall be determined in accordance with section 5110
19 of title 38, United States Code, but shall in no case be
20 earlier than the effective date of the final regulations pre-
21 scribed pursuant to subsection (b)(2).

22 (d) DEFINITIONS.—In this section:

23 (1) The term “covered study” includes—

24 (A) the study conducted by the National
25 Academies of Sciences, Engineering, and Medi-

1 eine titled “Respiratory Health Effects of Air-
2 borne Hazards Exposures in the Southwest
3 Asia Theater of Military Operations”; and

4 (B) any subsequent study conducted by the
5 National Academies of Sciences, Engineering,
6 and Medicine regarding the effects of exposure
7 of humans to toxic airborne chemicals and
8 fumes caused by open air burn pits and other
9 airborne hazards.

10 (2) The term “covered veteran” means a vet-
11 eran who, on or after September 11, 2001—

12 (A) was deployed in support of a contin-
13 gency operation while serving in the Armed
14 Forces; and

15 (B) during such deployment, was based or
16 stationed at a location where an open burn pit
17 was used.

18 (3) The term “open burn pit” means an area
19 of land that—

20 (A) is designated by the Secretary of De-
21 fense to be used for disposing of solid waste by
22 burning in the outdoor air; and

23 (B) does not contain a commercially manu-
24 factured incinerator or other equipment specifi-

1 cally designed and manufactured for the burn-
2 ing of solid waste.

3 **SEC. 3. ACCESS OF THE NATIONAL ACADEMIES OF**
4 **SCIENCES, ENGINEERING, AND MEDICINE TO**
5 **INFORMATION FROM THE DEPARTMENT OF**
6 **DEFENSE.**

7 Upon request by the National Academies of Sciences,
8 Engineering, and Medicine (in this section referred to as
9 the “Academies”), the Secretary of Defense shall provide
10 to the Academies information in the possession of the De-
11 partment of Defense that the Academies determine useful
12 in performing a covered study, as that term is defined in
13 section 2(d). Such information includes, at a minimum,
14 all environmental sampling data relative to any location
15 included in the study.

○